819

John D. Negroponte

Current
Policy
No. 819

Current Developments in U.S. Oceans Policy

United States Department of State
Bureau of Public Affairs
Washington, D.C.

NEWARK PUBLIC LIBRARY
MAY 2 0 1986
U. S. GOVT. PUBS.
DEPOSITORY 325

Following is an address by Ambassador John D. Negroponte, Assistant Secretary for Oceans and International Environmental and Scientific Affairs, at the 10th annual seminar sponsored by the Center for Oceans Law and Policy, Southhampton, Bermuda, March 14, 1986.

I am most gratified to be here tonight to share my thoughts with you on the direction of U.S. law of the sea (LOS) policy. In that the kaleidoscope of international legal debate has now changed in such a way as no longer to accord law of the sea the pride of place it so long enjoyed, I find it reassuring that so many renowned individuals as those of you here tonight still devote much time and energy to oceans issues. The United States, not least of all the Department of State, benefits from that continued interest, and I appreciate it.

I find myself treading familiar footfalls in my present role as Assistant Secretary for Oceans and International Environmental and Scientific Affairs at State. From my early years I remember with much warmth John Moore [Director of the Center for Oceans Law and Policy], with whom I first collaborated when I was a member of the National Security Council staff. Shortly thereafter, I served as political counselor in Quito and subsequently as Deputy Assistant Secretary for Oceans Affairs at a time when the Third UN Conference on the Law of the Sea (UNCLOS III) was the focus of the international legal world. Through my work at that time, I came to recognize his remarkable contributions to UNCLOS III and to the convention text, from which we continue to benefit today. While that conference has concluded, the United States remains intensely involved in working with other countries to shape the evolution of international oceans law and practice.

At the outset I wish to emphasize that the policy of the United States is established in the President's March 10, 1983, oceans policy statement. We are prepared to cooperate with other nations on oceans matters of mutual concern. Although the 1982 Convention on the Law of the Sea was unacceptable because of the deep seabed mining regime, the United States accepts and acts in accordance with the balance of interests relating to traditional uses of the oceans and recognizes rights of other coastal states in the waters off their coasts provided those states recognize our rights and those of other states under international law; the United States exercises and asserts its navigation and overflight rights and freedoms worldwide, consistent with the rules reflected in the LOS Convention; and the United States does not acquiesce in unilateral acts of other states, inconsistent with that customary law, which are designed to restrict the freedoms and rights of the international community relating to high seas uses. This is a sound policy based upon established principles of international law and an assessment of U.S. interests.

The United States remains as committed now as was the case before and during the LOS Conference to a LOS regime which provides uniformity and stability of expectation for the community of nations. This Administration made an effort to try to amend the seabed portion of the convention in such a way as to enable the United States to become a party to it. That we did not succeed in getting those changes was lamentable. But that does not detract from our support for the sound rules reflected in other parts of the convention.

The United States is now engaged in a deliberate, methodical process of promoting the universal application of rules of international law reflected in the nonseabed parts of the convention. This stage, while not as visible or exciting as the conference, is every bit as significant and in many ways more important than the negotiations. Although neither recognized by the public nor even many times by the informed practitioner of oceans law, the reality is that the United States has a busy law of the sea program.

I would like to turn now to describe our current programs to achieve the objectives of our law of the sea policy.

Preservation of Navigational Freedoms

Preservation and promotion of traditional international navigational freedoms was the most significant development of UNCLOS III. Much of our LOS program is devoted to safeguarding this objective.

As a first step, we endeavor to ensure that the United States legally pro-

S1.71/4:

READEX FICHE

tests what it considers to be excessive claims of other governments to preserve our juridical position. This is no small undertaking. Since December 1982, the Department of State has issued well over 40 LOS protest notes to other governments. Further, such notes themselves often give rise to replies, which the Department must evaluate to ascertain whether a rejoinder or other followup is required.

Second, to illustrate clearly our national resolve, we have not been bashful about exercising the rights we claim. In this regard, the Department of State and the Navy have established an exercise-of-rights program. Subject to definite guidelines and review, the program challenges illicit coastal state maritime claims which exceed what is permitted by international law. A well-known example of such a challenge is the Navy's role in Libya. At issue is not only a prior permission requirement to exercise the right of innocent passage in the territorial sea but also a claim by Libya that the Gulf of Sidra constitutes a historic bay the waters of which are internal within a 300-mile straight line closing the gulf.

Third, to guide the development of state practice toward acceptance of international law of the sea as reflected in the 1982 convention, we have and will continue to conduct numerous bilateral discussions with many countries. Because it is far easier to influence favorably state legislation prospectively than retrospectively, we try to work with key states to discuss in advance their legislation implementing the convention's provisions. For example, Fiji's archipelagic legislation conforms in all significant aspects to the archipelagic articles in the convention, reflecting the signal role that nation played in UNCLOS III. We hope that it will serve as a prototype for other potential archipelagic states to emulate.

EEZ Implementation

Not only is it vital to work with other countries to encourage conformity with the law of the sea but also we must work to ensure that our own house is in order. From a broad domestic policy vantage, the Administration—pursuant to the President's EEZ [exclusive economic zone] proclamation and accompanying oceans policy statement of March 10, 1983—decided that, in lieu of enacting comprehensive EEZ legislation reflecting the jurisdiction accorded coastal states in the EEZ, it was preferable to amend individually the numerous Federal statutory provisions regulating activities in the EEZ. This decision was taken for numerous reasons. Not least among them was the desire to avoid, wherever possible, the consideration of such omnibus legislation by the myriad of congressional committees which would have cognizance over such proposals. We also wished to avoid engaging in possible State/Federal debates. Consequently, the executive branch, at the request of the National Advisory Committee on the Oceans and Atmosphere, undertook a comprehensive analysis of present statutory authorities. The review is well along and will ultimately be filed with the committee. It should be noted, however, that the review does not, in the main, recommend any particular course of action, concentrating primarily on identifying jurisdictional shortfalls.

Fisheries

We have also pressed forward on other fisheries matters. In March 1985, after 14 years of negotiation, the United States and Canada brought into force a new west coast salmon treaty that places the U.S. and Canadian salmon fisheries from California to Alaska on a cooperative agreed footing for the first time ever.

We have also embarked on new discussions with Japan to seek further reductions in its interception of U.S.-origin salmon in Japan's high seas fisheries.

With respect to the allocation of surplus fishery resources within the U.S. 200-mile zone, we are rapidly moving toward the day in which U.S. fishermen will be able to utilize fully the available fishery resources off our coast. Our present policy fosters the growth of the U.S fishing industry by basing our allocations of fish to those countries which cooperate with us on fisheries trade and joint venture operations to the benefit of the U.S. industry.

With regard to marine mammals, a notable achievement occurred in the latter part of 1984 when we reached agreement with Japan that it would cease commercial whaling operations by 1988. On the basis of this, we promised not to certify Japan under the Pelly-Packwood amendments, which would have required a minimum 50% reduction in fisheries allocations. As you may know, some environmental groups have legally challenged the government's action, and the case is now before the Supreme Court.

Ongoing negotiations with Southwest Pacific island states, as well as Australia and New Zealand, hopefully will result in an agreement setting forth agreed terms and conditions of access for U.S. tuna boats in the area, pursuant to issuance of a regional license. Such an agreement would preserve the U.S. juridical position on highly migratory species while respecting the views of the island states, which continue to treat tuna as they do coastal species. A similar agreement concluded, but not yet in force, is the Eastern Pacific Tropical Tuna Convention concluded in April 1983. Already ratified by the United States, Honduras, and Panama, it will come into force upon ratification by two additional signatories.

Deep Seabed Mining

A discussion of U.S. law of the sea policy would not be complete without some reference to deep seabed mining. Our position on Part XI of the 1982 UN Law of the Sea Convention is well known. The objections we have raised with respect to part XI are strongly held. Suffice it to say, we do not believe that the international political climate exists which would be conducive to addressing our objections adequately at this time. This does not mean that the United States has despaired of achieving a regime with broad support in the international community. We believe that it will take time for many to grasp fully the changing realities. Due to recent economic trends, significant development of deep seabed resources is not likely to occur until well into the next century at the earliest. One cannot help but wonder whether the interests of the international community are well served by developing a detailed mining code and bringing into being an elaborate bureaucracy to administer it when no industry exists and when the basic economic, technical, and environmental conditions affecting this new activity are largely unknown and unknowable at this time. It is not inconceivable to me that some day those responsible for LOS policy in other capitals around the world will increasingly come to appreciate the implications of these realities and seek to accommodate our interests and concerns. At this juncture, patience is probably our most effective tool to achieve a broadly based regime.

Claims of rights to explore specific areas of the deep seabed have been made by a number of enterprises based on significant exploration activities. Most overlaps arising from competing claims among these pioneers have been

resolved by the pioneers themselves; some remain. Given the potential for conflict arising from competing claims, we believe it desirable from the standpoint of all members of the international community that these overlapping claims be resolved. We continue to be willing to play a constructive role in encouraging the resolution of overlapping claims in a manner that gives appropriate recognition to the activities conducted by the respective claimants. A solution to this problem in a way that fairly reflects the interests of all involved would demonstrate the ability of the international community to cooperate effectively in this area.

Domestically, the United States has issued exploration licenses to the four consortia headquartered in the United States pursuant to the 1980 Deep Seabed Hard Mineral Resources Act. The Administration is now in the process of promulgating regulations for commercial recovery.

Environment

The United States continues to promote the preservation and enhancement of the marine environment. Internationally, this occurs on the broad multinational level through international organizations such as the International Maritime Organization, long renowned as the leader in vessel safety and pollution issues. In order to promote efficiency and effectiveness in international negotiations, a trend has recently developed to treat marine environmental issues on a regional scale as well. This approach—in which the UN Environmental Program and its Regional Seas Program have played a major role—has led to active U.S. participation in formulating the successfully concluded Cartagena convention for the Caribbean and, more recently, a draft environmental convention for the South Pacific under the auspices of the South Pacific Regional Environmental Program. Domestically, we work to further the passage of domestic implementing legislation to complement their international counterparts, such as title IV of the so-called superfund bill (H.R. 2005) currently before Congress.

Boundaries

The United States is attempting to resolve its overlapping EEZ and continental shelf claims with several neighboring states. We have established our maritime boundaries with Venezuela, the Cook Islands, Tokelau, Cuba, and Mexico. Boundaries with the latter two are established by executive agreements, pending advice and consent of the Senate to treaties establishing the same. We have asked the Canadians to begin talks on our outstanding maritime boundary issues, which include areas in the Beaufort Sea, Dixon Entrance, Strait of Juan de Fuca, and the extension of the Gulf of Maine boundary. They have not yet responded to our request for negotiations. We sought to resolve our maritime boundary with the Dominican Republic, but no agreement has yet been reached. Finally, the United States has held several rounds of discussions with the Soviets on interpretation and application of the 1867 convention line, which the United States regards as the maritime boundary in the Bering and Chukchi Seas.

Marine Scientific Research

The President's 1983 policy statement resolved one major marine scientific research (MSR) problem which had long plagued marine scientists, who often found it difficult to operate within 200 miles of many coasts because of U.S. nonrecognition of foreign MSR jurisdiction. Since the President's decision to recognize MSR jurisdiction, as reflected in the LOS text, U.S. research in foreign waters has tripled. Most importantly, the President maintained our basic policy by not asserting MSR jurisdiction in our own EEZ. Our experience demonstrates that we do not need such jurisdiction to maintain our economic interests there and can benefit from foreign research.

The exact nature of MSR jurisdiction is still evolving, and the negotiations being conducted by our marine science office for research vessel clearances are having a significant impact on the often vague LOS text on marine scientific research. We are helping to build a concrete record of state practice in establishing more favorable standards than a strict reading of that text might suggest.

We are continuing to work on several serious problems, such as a few states trying to exclude research vessels from broad coastal zones. We are working with such nations to persuade them that such restrictions are both contrary to international law and their own interests in gaining ocean knowledge through cooperative endeavors. We are also working to maintain the freedom of hydrographic surveying in the EEZ as essential to ship safety, interdependent ocean commerce, and prevention of pollution from ship accidents—subjects of equal concern to all nations.

We can also see the probability of greater use of international organizations, such as the Intergovernmental Oceanographic Commission, as umbrellas for cooperative marine scientific research, including that within national EEZs.

Closing Remarks

As you can appreciate, our government's LOS program is a replete and active one whether it is in the area of navigational freedoms, EEZ implementation, fisheries, deep seabed mining, the marine environment, maritime boundaries, or marine scientific research. The areas of activity address every major part of the LOS Convention. So when one hears the cliche that the law of the sea is dead, I think it is well to reflect upon the multiplicity of issues of oceans use and oceans law which arise and must be dealt with on a continuing, daily basis. The trend, if anything, is intensifying.

To be sure, there are those who will argue that an LOS system can only be meaningful if the United States is party to an agreed deep seabed minerals regime. And I can understand this point of view, while at the same time disagreeing with it. There are too many other aspects of oceans use and law which we must press forward. That is precisely what we have done and in an internationally coordinated fashion. We must continue to work cooperatively and diligently with other countries, especially coastal states, to ensure that the positive results of the LOS Convention are accentuated and that extensions of coastal jurisdiction are carried out in conformity with international law. I hope my remarks this evening have succeeded, at least in part, in conveying both the flavor and the detail of how our government is going about this challenging and fascinating task in this important period in the evolution of oceans law. ■

Published by the United States Department of State • Bureau of Public Affairs
Office of Public Communication • Editorial Division • Washington, D.C. • May 1986
Editor: Colleen Sussman • This material is in the public domain and may be reproduced without permission; citation of this source is appreciated.

Bureau of Public Affairs
United States Department of State
Washington, D.C. 20520

Official Business

If address is incorrect
please indicate change
Do not cover or destroy
this address label. Mail
change of address to
PA/OAP, Rm. 5815A

Postage and Fees Paid
Department of State
STA-501

U.S. MAIL